IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1512 of 1997
WITH
FIRST APPEALS NO.1513,1514,1517, 1518, 448 to 450 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER
Versus
BECHARBHAI HIRABHAI PATEL

Appearance:
1. First Appeal No. 1512 of 1997
MR DG CHAUHAN for Petitioner No. 1
MR MUKESH R SHAH for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
MR VIJAY H PATEL for Respondent No. 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and

MR.JUSTICE H.K.RATHOD

Date of decision: 23/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

While deciding First Appeal No. 412 of 1992, learned advocate Mr. R.N.Shah submitted that there is a group of eight identical matters which have been admitted by this Court on the basis of First Appeal No. 412 of 1992 and order has been passed by this Court that the said eight appeals of 1997 be heard along with First Appeal No. 412 of 1992. Therefore, in view of the submission of Mr. R.N.Shah, learned advocate and in view of the order passed by this Court in the said group of eight appeals, we have called for the papers of the said appeals from the Registry and thereafter with the consent of learned advocates appearing for the respective parties, we have heard the said appeals.

Also heard learned AGP Mr. H.C.Patel for the appellants.

1. First Appeals No. 1512, 1513 and 1514 of 1997 relate to Land Acquisition Cases No. 1101 of 1988 to 1103 of 1988 wherein the Reference Court has passed an award on 1.11.1996 fixing market price at the rate of Rs. 39/- per sq.mt. for the lands acquired by the State Government which has been challenged by the Executive Engineer, Public Health Works Division, Gujarat Water Supply and Sewerage Board, Himatnagar.

2. First Appeals No. 1517 and 1518 of 1997relate to Land Acquisition Cases No. 1104 and 1105 of 1988 dated 15.2.1997 wherein also, the Reference Court fixed the market price of the land in question at Rs. 39/- per sq.mt.

3. First Appeals No. 448 to 450 of 1997 are in respect of Land Acquisition Cases No. 1101 to 1103 of 1988 decided by the Reference Court on 1.11.1996 fixing market price of Rs.39/- per sq.mt. It is made clear that the award passed by the Reference Court in respect of Land Acquisition Cases No. 1101 of 1988 to 1103 of 1988 has been challenged by the State Government as well as Himatnagar Municipality. First Appeals No. 448 to 450 of 1997 have been filed by Himatnagar Municipality challenging the very same award before this Court.

4. In this group of appeals, the land in question which has been acquired by the State Government, are situated in Motipura which area falls within the limits

of Himatnagar Municipality. The notification under section 4 was published on 13.2.1986, award was passed by the Land Acquisition Officer on 1.8.1987 and possession of the land was taken on 1.8.1987. While deciding the market price of the land in question, the Reference Court has considered the award passed in Land Reference Case No. 842 of 1990 produced at Ex. 55 in respect of adjoining land where the market price was fixed at Rs. 35/- per sq.mt. In the said award, the land being situated in village Piplodi, the Reference Court fixed the market price at Rs. 35/- per sq.mt. as the said land was near village Motipura. However, in the present case, the land in question being the area of Motipura which falls within the limits of Himatnagar Municipality, the Reference Court awarded compensation at the rate of Rs. 39/- per sq.mt. only on the ground that the notification under section 4 of the Land Acquisition Act in respect of village Piplodi Ex. 55 was issued on 30.5.1985 and in the present case, the notification under section 4 was issued on 13.2.1986 i.e. after the period of about eight months. Therefore, considering the price increase during these eight months at the rate of 1/2 % for each month, the Reference Court fixed the market price in respect of the land in the present case at the rate of Rs. 39/- per sq.mt.

5. Today, we have decided First Appeal No. 412 of 1992 by the State Government arising out of the Land Reference Case No. 842 of 1990 and we have dismissed the said appeal by confirming the judgment and award passed by the Reference Court in Land Reference Case No. 842 of 1990. This being the land of Motipura covered within the limits of Himatnagar Municipality and there being eight months delay in issuing notification under section 4 of the Land Acquisition Act, the Reference Court fixed the market price at the rate of Rs. 39/- per sq.mt. The award passed by the Reference Court in Land Reference Case No. 842 of 1990 has been relied upon by the Reference Court in the facts of the present case against which the State appeal has been dismissed by this Court today confirming the award passed by the Reference Court in Land Reference Case No. 842 of 1990. Therefore, in view of the reasonings given by us while dismissing First Appeal No. 412 of 1992, in our opinion,the same reasonings are applicable to the facts of the present group of eight appeals and, therefore, without repeating the same, for the same reasons, we dismiss this group of eight appeals.

6. However, while disposing of these appeals, request is made by Shri R.N.Shah, learned advocate

appearing for the respondents that in view of the recent decision of the Apex Court in the case of Sunder Vs. Union of India, 2001(3) GLH 446, claimants are also entitled to interest on the amount of solatium. In our opinion, the claimants are otherwise also entitled to interest on solatium in view of the ratio laid down by the Apex Court in the aforesaid decision. Therefore, we hold that the claimants are entitled to interest on the amount of solatium.

7. In view of the aforesaid discussion and subject to the aforesaid observations, these appeals stand dismissed with no order as to costs.

At the time of admitting the present appeals, Civil Application was filed by the State Government. The State Government had deposited 50% of the awarded amount before the Reference Court as per the interim order passed by this Court. Out of that, this Court permitted the claimants to withdraw 25% awarded amount and the rest of the amount is lying with the Reference Court and 50% amount is not deposited. Therefore, in view of this, the appellant State of Gujarat is directed to deposit the total amount awarded by the Reference Court including the interest and costs before the Reference Court within a period of three months from the date of receipt of certified copy of this judgment. The appellant is also directed to deposit the amount of interest on solatium which has been granted by the Reference Court within a period of three months from the date of receipt of certified copy of this judgment. On the said amount being deposited by the appellant State of Gujarat, the Reference Court is directed to disburse the said amount to the claimants after adjusting the amount withdrawn by the claimants.

(Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

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